

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-366-A - ORDER NO. 2006-328

MAY 30, 2006

IN RE: Application of Chem-Nuclear Systems, LLC, a)	ORDER IDENTIFYING
Division of Duratek, Inc., for Adjustment in)	ALLOWABLE COSTS
the Levels of Allowable Costs and for)	
Identification of Allowable Costs (FY 2005-)	
2006))	

I. INTRODUCTION

This matter is before the Commission by way of the Application of Chem-Nuclear Systems, LLC, a Division of Duratek, Inc., (“Chem-Nuclear” or “the Company”), dated September 27, 2005. By its Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs which the Commission had previously identified and for the identification of allowable costs for Fiscal Year 2005-2006 associated with the operation of the Company’s regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina (the “Barnwell Facility”). The Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act (the “Act”), which is codified as S.C. Code Ann. §§ 48-46-10, et. seq. (1976), as amended.

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the

disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina's membership in the Atlantic Low-level Radioactive Waste Compact (the "Compact") and authorizes the manner in which this State participates in the Compact with Connecticut and New Jersey, the other member states. S.C. Code Ann. § 48-46-20 (Supp. 2005).

The Act fixes a schedule of annually declining maximum volumes of low-level, radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact's member States. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2005). In addition, the Act empowers the South Carolina Budget and Control Board (the "Budget and Control Board") to fix the rates that an operator of a disposal facility in South Carolina may charge a generator for disposal of the generator's low-level radioactive waste. The Act fixes fees for various purposes and provides for the disposition of revenues produced by the disposal operations of facilities subject to the Act. Chem-Nuclear operates the only disposal facility for low-level, radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the "allowable costs" of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Supp. 2005). "Allowable costs" are "costs to a disposal site operator of operating a regional disposal facility" and they "are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations." S.C. Code Ann. § 48-46-30(I) (Supp. 2005). The Act provides that "allowable costs" expressly include the costs of certain specifically identified activities necessary in the operation of a low-level

radioactive waste facility. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Supp. 2005). Section 48-46-40(3) also provides that “allowable costs” include “any other costs directly associated with disposal operations determined by [the Commission] to be allowable.” The Act excludes from identification as “allowable costs” the costs of certain expressly listed activities and “any other costs determined by [the Commission] to be unallowable.” S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2005).

The Act entitles a disposal facility operator to recover an operating margin of 29%, which is applied to identified “allowable costs,” excluding certain “allowable costs” for taxes and the licensing and permitting fees which the operator is responsible to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2005).

The level of “allowable costs” and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At the end of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue the operator had received for waste disposal services during the fiscal year, reduced by the operator’s identified “allowable costs,” reduced further by the 29% statutory operating margin on the “allowable costs” under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of certain administrative costs which the Budget and Control Board, the Commission, the State Treasurer and the Atlantic Compact Commission (the “Compact Commission”) had incurred for the conduct of those agencies’ responsibilities in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2005).

The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of “allowable costs” which the Commission had identified for the previous fiscal year and for identification of costs which the Commission had not previously identified as “allowable costs.” S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2005). Upon disposition of the issues in an application, the Act requires the Commission to authorize the site operator to adjust its “allowable costs” for the current fiscal year to compensate the site operator for revenues “lost” during the previous fiscal year (that is, the difference between the level of “allowable costs” previously identified and the level of “allowable costs” identified upon approval of the application). Id.

Chem-Nuclear filed its Application in this proceeding seeking to be compensated for the difference between the level of “allowable costs” which we identified in Order No. 2005-338(A) and the amount of such costs which the Company actually experienced in the Fiscal Year 2004-2005 and for identification of Chem-Nuclear’s “allowable costs” for Fiscal Year 2005-2006. As in prior proceedings, Chem-Nuclear applied to be compensated only for those “allowable costs” incurred in Fiscal Year 2004-2005 where the actual costs were more than those that we had identified and approved in Order No. 2005-338(A). (Application at paragraphs 10-13 and Exhibit A to the Application).

This case represents the sixth annual proceeding in this Docket in which the Commission has considered the identification of “allowable costs” for Chem-Nuclear under the provisions of the Act. See Order No. 2001-499, dated June 1, 2001; Order No.

2002-395, dated June 3, 2002; Order No. 2003-188, dated April 14, 2003; Order No. 2004-349, dated July 23, 2004; and Order No. 2005-338(A), dated June 27, 2005.

Upon receipt of the Company's Application, the Commission's Docketing Department directed Chem-Nuclear to publish a Notice of Filing, advising the public of the submission of the Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear filed affidavits of publication which demonstrated its compliance with the instructions of the Docketing Department.

The Act specifies certain agencies to be parties of record in proceedings for identification of allowable costs before the Commission. Those parties are: the Budget and Control Board, the Consumer Advocate for the State of South Carolina and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40 (B)(9) (Supp. 2005). In addition, the Compact Commission and the South Carolina Department of Health and Environmental Control ("DHEC") have the discretion under the Act to participate as parties. Id. Pursuant to the provisions of S.C. Code Ann. § 58-4-10(B) (Supp. 2005), the Office of Regulatory Staff ("ORS") represents "the public interest" in proceedings in this Docket.

On April 12, 2006, the Commission held an evidentiary hearing with respect to the issues in the Company's Application. The Honorable Randy Mitchell, Chairman, presided and Commissioners Clyburn, Hamilton, Howard and Wright were in attendance. Appearances were as follows: Robert T. Bockman, represented Chem-Nuclear; Van Whitehead represented DHEC; Bonnie D. Shealy, represented the Compact Commission;

and Florence P. Belser and Jeffrey M. Nelson represented the ORS; neither the Budget and Control Board nor the Consumer Advocate were represented by counsel. The Attorney General did not appear or participate in the hearing. Duke Power and South Carolina Electric & Gas Company, which had intervened in this Docket and participated in some previous hearings, did not appear or participate in the hearing.

Chem-Nuclear and the ORS entered into an amended Settlement Agreement by which they resolved various issues raised in the Application and during the audit which ORS conducted. The amended Settlement Agreement was submitted to the Commission at the hearing and is a part of the record as Hearing Exhibit No. 1. (TR. pp. 8-13). Chem-Nuclear presented the evidence of two witnesses: Regan E. Voit and James W. Latham. The ORS offered direct testimony concerning the amended Settlement Agreement and the audit that ORS conducted. (*Id.*). The record of this proceeding consists of the pleadings; the Commission's notices; the transcript of the oral testimony, consisting of 71 pages; and three hearing exhibits, including a report prepared by ORS of its examination of Chem-Nuclear's books and records, which was submitted by direction of the Commission and without objection by any party. (TR. pp. 13-14).

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2004-2005 and for Fiscal Year 2005-2006 were resolved among the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

A. “Allowable Costs” for Fiscal Year 2004-2005

In accordance with the provisions of the Collaborative Review of Chem-Nuclear’s Operations and Efficiency Plan (“OEP”) which Order No. 2004-349 approved for use in these “allowable cost” proceedings, Chem-Nuclear’s application and its evidence separated costs into three categories: fixed costs, variable costs and irregular costs. (TR. pp. 23 and 26). As Order No. 2004-349 recognized, the OEP was valid for use as a “baseline for establishing a method for identifying ‘allowable costs’.” (Order No. 2004-349, p. 17.)

1. Fixed Costs for Fiscal Year 2004-2005

Chem-Nuclear separated its fixed costs for Fiscal Year 2004-2005 into several general categories: labor and fringe costs, non-labor costs, corporate allocation of general and administrative expense, equipment leases and support, depreciation, insurance, as well as those fixed costs for which the statutory operating margin was not applicable. (Hearing Exhibit No. 3 (REV-1, p. A-1)). The operating experience for that period resulted in total fixed costs of \$7,785,664 which were actually incurred. (TR. p. 45) While the total fixed costs which Chem-Nuclear incurred for Fiscal Year 2004-2005 exceeded the level of fixed costs anticipated in Order No. 2005-338(A), the evidence establishes that the costs were incurred to meet increased expenses which were reasonable and properly identifiable as allowable costs in this proceeding. Principally, those costs related to the allocated expenses for services provided by Duratek, Inc., Chem-Nuclear’s parent company, for common services which produce general cost savings by avoiding duplication of effort or expense. (TR. pp. 52 and 53-55). The

identification of those allocated costs was derived in the manner which the Commission has previously approved. (See TR. p. 46; Hearing Exhibit No. 3 (REV-1, pp. A-3 and A-4)). In addition, the Company incurred fixed costs for equipment leases (TR. pp. 45-46, 51-52 and 56-60; Hearing Exhibit No. 3 (REV-1, pp. A-2)) and for the expenses associated with its legal defense against the challenge to DHEC's approval of the renewal of its operating license (TR. pp. 30 and 46-47; Hearing Exhibit No. 3 (REV-1, pp. A-4 and A-5)). The evidence in the record fully supports the identification of \$7,785,664 as fixed "allowable costs" for Fiscal Year 2004-2005.

2. Variable Material Costs for Vaults for Fiscal Year 2004-2005

The actual costs for the material costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. (TR. pp. 39 and 47; Hearing Exhibit No. 3 (REV-1, p. A-7)). For Fiscal Year 2004-2005, Chem-Nuclear's actual costs for disposal vaults were \$1,489,910. (TR. p. 39; Hearing Exhibit No. 3 (REV-1, p. A-7)). There is no evidence in the record in opposition to the identification of that amount as the proper "allowable cost" for variable material costs for vaults.

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2004-2005

Order No. 2005-338(A) determined various categories of rates applicable to purchase, inspection, and placement of disposal vaults; handling of the various classes of waste shipments; slit trench offload operations; customer assistance; and scheduling of waste shipments and maintenance of disposal records. (TR. pp. 39-40 and 47-48). The variable Labor and Non-Labor rates are associated with several independent variables.

(Id. pp. 40 and 48). The base rates that Order No. 2005-338(A) established actually produced estimated variable labor and non-labor costs within approximately four percent (4%) of Chem-Nuclear's actually experienced variable costs for Fiscal Year 2004-2005 (Id.; Hearing Exhibit No. 3 (REV-1, p. A-6)). There is no evidence in the record in opposition to the identification of \$771,771 as the allowable variable labor and non-labor costs for that period.

4. Irregular Costs for Fiscal Year 2004-2005

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. (TR. pp. 40 and 48). The record contains numerous descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2004-2005. (Id., pp. 40-42 and 48-51; Hearing Exhibit No. 3 (REV-1, pp. B-1 through B-3)). At the date of the issuance of Order No. 2005-338(A), not all of the irregular costs for Fiscal Year 2004-2005 were known and measurable. The evidence here establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2004-2005 of \$803,696. (TR. pp. 40 and 48). That amount is uncontested by any evidence in the record.

B. Proposed "Allowable Costs" for Fiscal Year 2005-2006

Chem-Nuclear's Application and the evidence in the record presented "allowable costs" to be identified for Fiscal Year 2005-2006, separated into the three cost categories that were submitted in the Collaborative Review of the OEP and adopted in Order No. 2004-349. (TR. pp. 42-43 and 49-51; Hearing Exhibit No. 3 (REV-1, p. C-1)).

1. Allowable Fixed Costs for Fiscal Year 2005-2006

Chem-Nuclear proposed total fixed costs of \$7,758,171 to be identified as “allowable costs” for Fiscal Year 2005-2006. (TR. p. 42-43 and 49-50). That amount was based on actual fixed costs incurred in Fiscal Year 2004-2005, with appropriate adjustments for inflation as the Commission has previously approved. The total fixed costs for Fiscal Year 2005-2006 include \$780,423 to which the statutory operating margin is not applicable. (Hearing Exhibit No. 3 (REV-1, p. C-1)). The record contains no evidence in opposition to the identification of \$7,758,171 as allowable fixed costs for Fiscal Year 2005-2006.

2. Allowable Irregular Costs for Fiscal Year 2005-2006

Chem-Nuclear described general categories of projects with estimated total costs of \$205,463, which it categorized as irregular costs for Fiscal Year 2005-2006. (TR. pp. 43 and 50; Hearing Exhibit No. 3 (REV-1, P. C-1)). The record contains no evidence in opposition to the identification of \$205,463 as allowable irregular costs for Fiscal Year 2005-2006.

3. Variable Materials Costs (Vaults) Rates for Fiscal Year 2005-2006

For Fiscal Year 2005-2006, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which we had approved in Order No. 2005-338(A) for Fiscal Year 2004-2005, as adjusted for a documented increase in the cost of concrete disposal vaults from Chem-Nuclear’s supplier. (TR. pp. 43 and 50-51; Hearing Exhibit No. 3 (REV-1, p. C-1)). There was no evidence of record in opposition to the proposed variable cost rates for disposal vaults.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2005-2006

For Fiscal Year 2005-2006, Chem-Nuclear proposed rates for variable labor and non-labor costs. Those rates pertained to five categories: vault purchase, inspection and placement (per vault); ABC waste disposal (per shipment); Slit Trench Waste Operations (per offload); customer assistance (per shipment); and maintenance of trench records (per container). The rates were based on the rates approved in Order No. 2005-338(A), adjusted for inflation. (TR. pp. 43 and 50). There is no evidence of record in opposition to those rates.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. §§ 48-46-40(B), et seq. (Supp. 2005) to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site in question continuously since 1971 without interruptions. The site is comprised of approximately 235 acres of property owned by the State of South Carolina and leased by Chem-Nuclear from the Budget and Control Board. Approximately 105 acres have been used for disposal. Approximately 10 acres remain available for disposal. The remaining 120 acres include a buffer zone area, water basins, and space for support operations.

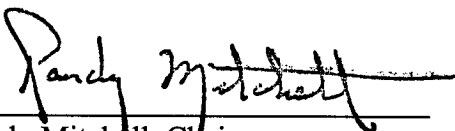
3. Undisputed amounts in Chem-Nuclear's accounts that shall herein be identified and approved by this Commission as "allowable costs" for Fiscal Year 2004-2005, are included in Appendix A, which is attached to this Order.

4. Further, we approve and identify as “allowable costs” for Fiscal Year 2005-2006 the individual figures and the sum of \$7,963,634 in fixed and irregular costs. We approve the variable cost rates for Fiscal Year 2005-2006, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable costs category will be dependent on the actual volumes and classes of waste received. The rates in Appendix B are appropriately documented in the record of this proceeding.

5. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

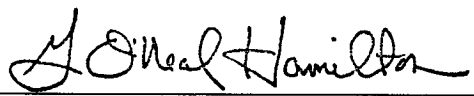
6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)

APPENDIX A – Order No. 2006-328

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Chem-Nuclear Systems, LLC

Allowable Costs

Fiscal Year Ending June 30, 2005

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Fixed Labor and Fringe	\$ 2,898,573
Non-Labor Costs	\$ 1,282,515
Depreciation	\$ 97,211
Insurance	\$ 798,300
Equipment Leases and Support	\$ 373,092
Corporate G&A	\$ 1,187,072
Intangible Asset Amortization (Operating Costs)*	\$ 625,000
Employee Retention Compensation*	\$ 101,858
Legal Support*	\$ 422,043
Total Fixed Costs	\$ 7,785,664
Variable Costs	
Vault costs	\$ 1,489,910
Variable Labor and Fringe **	\$ 771,771
Total Variable Costs	\$ 2,261,681
Irregular Costs	
Total Irregular Costs (see page 2 of 2)	\$ 803,696
Total Allowable Costs	\$ 10,851,041

* Not subject to statutory operating margin

** Categories of cost include: Vault Purchase and Inspection, ABC Waste Disposal, Slit Trench Operations, Waste Acceptance and Trench Records.

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Chem-Nuclear Systems, LLC

Allowable Costs

Fiscal Year Ending June 30, 2005

Irregular Cost Item	<u>Labor+Fringe</u>	<u>Non-Labor</u>	<u>Total Cost</u>
Irregular components	\$ 12,552	\$ 107,022	\$ 119,574
Various Trenches	\$ 52,160	\$ 263,044	\$ 315,204
Combined Decontamination and Corrective Actions	\$ 3,473	\$ 11,293	\$ 14,766
Engineering Drawing Updates	\$ 60,260	\$ 23,666	\$ 83,926
Miscellaneous Irregular Projects	\$ 8,206	\$ (41)	\$ 8,165
License Renewal and Appeal Costs	\$ 163,422	\$ 86,956	\$ 250,378
B&CB support (irregular)	\$ 8,228		\$ 8,228
Other Irregular costs	\$ <u>15</u>	\$ <u>3,440</u>	\$ <u>3,455</u>
 <u>Total Irregular Costs</u>	 \$ <u>308,316</u>	 \$ <u>495,380</u>	 \$ <u>803,696</u>

APPENDIX B – Order No. 2006-328
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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2006

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Labor and Fringe	\$ 3,000,000
Non-labor Costs	\$ 1,308,109
Depreciation	\$ 250,000
Insurance	\$ 830,232
Equipment Leases and Support	\$ 386,150
Corporate Allocation (Management Fee/G&A)	\$ 1,203,257
Intangible Asset Amortization (Operating Rights)*	\$ 625,000
Employee Retention Compensation*	\$ 105,423
Legal Support*	\$ 50,000
Total Fixed Costs	\$ 7,758,171

Irregular Costs

Trench Construction	\$ 128,771
License Appeal	\$ 5,951
Corrective Action	\$ 19,277
Site Engineering Drawings	\$ 22,808
Irregular Components	\$ 291
Miscellaneous	\$ 28,365
Total Irregular Costs	\$ 205,463

Variable Costs

Variable Labor and Non-Labor Rates

Vault Purchase and Inspection (per vault)	\$ 89.31
ABC Waste Disposal (per shipment)	\$ 1,225.69
Slit Trench Operations (per slit trench offload)	\$ 8,666.66
Customer Assistance (per shipment)	\$ 293.80
Trench Records (per container)	\$ 68.32

Variable Material Costs (Vault Costs)

Class A Waste (per cubic foot)	\$ 37.78
Class B Waste (per cubic foot)	\$ 38.08
Class C Waste (per cubic foot)	\$ 38.00
Slit Trench Waste (per cubic foot)	\$ 124.23

* Not subject to statutory operating margin